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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,876	02/02/2005	Mitsuo Tashiro	FP3002-0036	5251

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CERMAK KENEALY & VAIDYA, LLP
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Alexandria, VA 22314

EXAMINER

GILBERT, ANDREW M

ART UNIT	PAPER NUMBER
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3767

MAIL DATE	DELIVERY MODE
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08/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/522,876

Applicant(s)

TASHIRO, MITSUO

Examiner

Andrew M. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-14,16,18-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-14,16,18-21 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgments

1. This office action is in response to the reply filed on 6/7/2007.
2. In the reply, the Applicant amended claims 1, 2, 4-6, 9, 10, 19; cancelled claims 8, 15, 17, 22, and 24.
3. Thus, claims 1-7, 9-14, 16, 18-21 and 23 are pending for examination.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Huber et al (5941847). Huber et al discloses a breast pump (Figs 1-3), comprising: a milk container main body (52) capable of accommodating sucked mother's milk; a deformable member (60) configured to provide a sealed space by contacting a breast; a horn member (16) disposed outside the deformable member; an internal space pressure altering device (32, 84, 80) that is configured to alternately provide a negative pressure condition and an atmospheric pressure condition in the sealed space; and a communicating portion (82) configured to connect the internal space pressure altering device and the sealed space, wherein the horn member is configured such that it does not deform when internal pressure within the sealed space varies and has a base end disposed near the communicating portion, an inner surface, and an opening end

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disposed near an entrance through which the breast is inserted (Figs 1-3); the deformable member is configured to cover the inner surface of the horn member, to deform when internal pressure within the sealed space varies, and has an attachable and detachable portion which is attachable to and detachable from the horn member (Figs 1-3); the attachable and detachable portion has a base end side attachable and detachable portion configured to be fixed to the base end of the horn member and an opening side attachable and detachable portion configured to be fixed to the opening end of the horn member (Figs 1-3); the horn member has an atmospheric pressure condition creating structure (space between arms 22) configured to maintain an atmospheric pressure condition in a space between the deformable member and the horn member, wherein the atmospheric pressure condition creating structure is at least one vent opening (space between arms 22) formed by only the horn member so as to directly open the space between the deformable member and the horn member to atmosphere, and a first side of the at least one vent opening in the horn member is exposed directly to the space between the horn member and the deformable member, and an opposite side of the at least one vent opening in the horn member is exposed directly to atmosphere exterior to the breast pump (Figs 1-3), and the atmospheric pressure condition creating structure is configured to maintain an atmospheric pressure condition in the space between the deformable member and the horn member continuously during operation of the internal space pressure altering device during both a time at which the negative pressure condition is present in the sealed space and a time at which the atmospheric pressure condition is present in the sealed space (Figs 1-

3; col 2, Ins 52-col 3, Ins 67). In reference to claim 3 (see Figs 1-3); claim 12 (se 64; Figs 1-3; wherein any portion of the deforming member that deforms in a direction (ie inwardly towards breast due to suction pressure) is configured to regulate a deformation direction).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 4, 5, 7, 9, 11, 13, 14, 16, 18, 19-21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber et al in view of Ford (5885246). Huber et al discloses the invention substantially as claimed except for expressly disclosing the deformable member has a stimulating convex projection inwardly disposed at a plurality of positions at least some being opposed to each other on a first virtual line, a deformation guide portion having a thinner wall than a wall of the deformable member and being disposed on a second virtual line that crosses the first virtual line. Ford teaches that it is known to have the deformable member has a stimulating convex projection inwardly disposed at a plurality of positions (10a-e, 15, 16, 17; Fig 1, 4-9) at least some being opposed to each other on a first virtual line (10a-e, 15, 16, 17; Fig 1, 4-9), a deformation guide portion having a thinner wall (ie 10a-e, Fig 2) than a wall of the deformable member (ie 11, Fig 2) and being disposed on a second virtual line that

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crosses the first virtual line (10a-e, 15, 16, 17; Fig 1, 4-9; wherein some convex projections may be termed to be convex projections along a 1st virtual line while those opposite on a 2nd virtual line may be termed to be a deformation guide portion) for the purpose of massaging the areola region stimulating lactation of milk. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the deformable member as taught by Huber et al with the deformable member as taught by Ford for the purpose of massaging the areola region stimulating lactation of milk.

Response to Arguments

8. Applicant's arguments with respect to claims 1-7, 9-14, 16, 18-21, 23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Gilbert whose telephone number is (571) 272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrew Gilbert

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

